

City of Sunnyvale Environmental Procurement Policy

Policy Purpose

The City of Sunnyvale finds that the preservation of natural resources, reduction of energy use and pollution, reduction of solid waste, and minimization of impact on the environment from City activities benefits all occupants of the City. It is the purpose of this policy to:

1. Help the City meet its current needs without compromising the ability of future generations to do the same.
2. Identify a simple, concise, environmentally sound, and cost-effective approach to environmental purchasing that all departments and divisions can easily implement.
3. Provide for the achievement of Action Statements 3.2B.2d and 3.2B.4a of the Solid Waste Sub-element which state, "Increase demand for recycled materials by advocating local state and federal legislation that will increase use of recycled content products."
4. Promote individual employee responsibility, provide Environmentally Preferable products and produce an operationally oriented, clearly written policy.

Policy Statement

It is the policy of the City of Sunnyvale, its employees and contractors, that when developing plans, drawings, work statements, and specifications, and in the evaluation of bids or proposals for the award of all contracts, for informal, formal, central, and decentralized purchases (including credit card, field purchase order, and petty cash purchases) environmentally preferable products and services shall be purchased, as defined by this section. Factors that will be considered when determining the environmentally preferable good or service include, but are not limited to:

- Minimization of virgin material use in product or service life cycle
- Maximization of recycled products used in product or service life cycle
- Environmental cost of entire product or service life cycle
- Reuse of existing products or materials in product or service life cycle
- Recyclability of product
- Toxicity reduction or elimination
- Elimination of uncertified hardwoods in product or service life cycle
- Ultimate disposal of product

All paper products purchased, including but not limited to, janitorial products, copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, envelopes, uncoated printing and writing paper, and specialized printing papers shall contain **no less than 30% postconsumer materials**, by weight, beginning July 1, 1999. The purchase of products that meet the standards above shall be allowed only if:

- The fitness and quality is equal to that of comparable non-environmentally preferable products.
- The product or service will do the job as well or better than the comparable non-environmentally preferable product or service and is compatible with City equipment.
- The cost of the Environmentally Preferable Product is not cost prohibitive in the judgment of the Purchasing Officer.
- Delivery or availability of the environmentally preferable product or service is comparable to that of the non-environmentally preferable alternative.

The Purchasing Officer shall, in cooperation with the Solid Waste Program Manager, develop administrative guidelines to implement this policy. The Purchasing Officer shall also:

- Ensure that purchasing documents, specifications, and contracting procedures do not discriminate against environmentally preferable goods and services.
- Establish standards for the purchase of environmentally preferable goods and services and raise or lower these standards to meet the objectives of this policy.
- Maintain a reference list of commonly purchased environmentally preferable products or services.
- Provide staff training in the purchase of environmentally preferable products and services.

Definitions:

Environmentally preferable means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, and disposal of the product or service.

Life Cycle Cost means the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs, and disposal costs discounted over the lifetime of the product.

Life Cycle Assessment means the comprehensive examination of a product's environmental and economic aspects and potential impacts throughout its lifetime, including raw material extraction, transportation, manufacturing, use and disposal.

Certified Hardwoods means hardwoods that have been certified by the Forest Stewardship Council as responsibly harvested. This certification process ensures the protection of endangered tropical hardwoods from over harvesting.

Postconsumer Material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. "Postconsumer material" is a part of the broader category of "recovered material".

Recovered Materials means waste materials and by-products which have been recovered or diverted from solid waste, but this term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

Recyclability means the ability of a product or material to be recovered from, or otherwise diverted from, the solid waste stream for the purpose of recycling.


Recycled Product means all materials, goods, and supplies, no less than 50 percent of the total weight of which consists of secondary and postconsumer waste with not less than 10 percent of its total weight consisting of postconsumer waste. These minimum percentages of secondary and postconsumer waste may change as industry availability changes.

Recycling means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products, and includes the use of separated wood waste as fuel for producing heat or electrical power by combustion.

Virgin Material means any material occurring in its raw form. Virgin Material is used in the form of raw material in the manufacture of new products.

Waste Prevention means any change in the design, manufacturing, purchase or use of materials or products (including packaging) to reduce their volume or toxicity before they become municipal solid waste. Waste prevention also refers to the reuse of products or materials.

Waste Reduction means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

 Integrated Pest Management Policy for City-Owned Facilities	Administrative Policy Manual Chapter 6 – Facilities & Equipment Article 12
	Attachments: <i>none</i>
Effective Date: November 2002	Responsible Department: Department of Public Works
Prior Version & Notes: Prior Version: <i>not available</i>	

Section 1. Purpose

This policy sets forth the guiding principles for development and implementation of Integrated Pest Management (IPM) on all City properties. The goals of the IPM policy and its implementation throughout the city are to:

- Create awareness among City staff of pest management techniques.
- Provide a means of educating all City departments to practice the most appropriate approach to managing pests on City properties.
- Reduce or minimize pesticide use on City properties.
- Eliminate adverse impacts to water quality (both in urban streams and South San Francisco Bay) due to pesticide usage.
- Prevent adverse impacts of pesticide usage on the quality of composted green waste.

Subd. 1. Background

The City's National Pollutant Discharge Elimination System (NPDES) permit from the California Regional Water Quality Control Board (NPDES Permit No. 01-024) requires that the City develop and implement a pesticide toxicity control plan to address urban stream impairment by pesticides. In particular, organophosphate-containing pesticides (e.g., Diazinon and chlorpyrifos) have been found to persist in the environment and cause water quality impairment of some South San Francisco Bay area urban creeks and streams. Also, the City is required to limit discharges of copper into South San Francisco Bay by its NPDES permit. Using non-chemical controls, biological controls, and less toxic chemicals instead of using copper-based and organophosphate pesticides to deal with pest problems will help reduce the impacts to urban streams and South San Francisco Bay.

Clopyralid is the very persistent active ingredient in a number of herbicides that can be used for weed control. Very small amounts of Clopyralid contained in green waste that is collected for composting will continue to be active and cause the finished compost product to adversely affect plants to which it is applied. However, Clopyralid is also a valuable herbicide for managing the noxious thistle family of weeds that may infest native grass areas and restoration projects. Restrictions on the collection of green waste for composting from Clopyralid-

treated areas are included in this policy to prevent the contamination of compost products produced at the SMaRT Station or other City facilities.

Section 2. Policy

Subd. 1. Definitions

The following definitions are used in this Article:

Biological control – The use of biological technologies to manage unwanted pests. Examples of this type of control include, but would not be limited to the use of pheromone traps or beneficial insect release for control of certain types of weeds or invasive insects in landscapes.

Cultural control - The use of IPM control methods such as grazing, re-vegetation and seeding or landscaping with competitive or tolerant species to manage unwanted weeds, rodents or plant diseases.

DPR - Department of Pesticide Regulations for the State of California' s Environmental Protection Agency. DPR, in partnership with Federal Environmental Protection Agency (EPA) and County Department of Agriculture, oversees all issues regarding the registration, licensing and enforcement of laws and regulations pertaining to pesticides.

Environmental Stewardship - The strategic approach to pest management in which the IPM practitioners focus on preserving the natural integrity and health of the environment, including public safety, while recommending or applying pest management methods. Environmental Stewardship philosophy helps to create awareness of the Best Management Practices (BMPs) and their relationship to maintaining a healthy environment while conducting pest management activities.

Integrated Pest Management (IPM) – IPM is the strategic approach that focuses on long-term prevention of pests and their damage from reaching unacceptable levels by selecting and applying the most appropriate combination of available pest control methods. These include cultural, mechanical, biological and chemical technologies that are implemented for a given site and pest situation in ways that minimize economic, health and environmental risks.

Mechanical controls – The use of IPM control methods utilizing hand labor or equipment such as mowers, graders, weed-eaters, and chainsaws. Crack and crevice sealants and closing small entryways (i.e., around pipes and conduits) into buildings for insect and rodent management are also mechanical controls.

PCA – PCA or Pest Control Advisor is one licensed by the California Department of Pesticide Regulations according to Title 3, Article 5 of the California Code of Regulations. Only a licensed PCA, who is registered with the County Agricultural Commissioner may provide written pest control recommendations for agricultural pest management, including parks, cemeteries, golf courses, and rights-of-way.

Pesticides – Defined in Section 12753 of the California Food and Agricultural Code as any spray adjuvant, or any substance, or mixture of substances intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any pest, as defined in Section 12754.5 (of the Food and Agricultural Code), which may infest or be detrimental to vegetation, man, animals, or households, or be present in any agricultural or nonagricultural environment whatsoever. The term pesticide applies to herbicides, insecticides, fungicides, rodenticides and other substances used to control pests. Antimicrobial agents are not included in this definition of pesticides

QAL - Qualified Applicators License is a licensed applicator according to Title 3, Article 3 of the California Code of Regulations. This license allows supervision of applications that may include residential, industrial, institutional, landscape, or rights-of-way sites.

QAC - Qualified Applicators Certificate is a certified applicator of pesticides according to Title 3, Article 3 of the California Code of Regulations. Applications may include residential, industrial, institutional, landscape, rights-of-way sites.

Structural Pest Control Operator (Branch I, II or III) – A licensed applicator for pest control within buildings and homes according to the requirements of the Structural Pest Control Board of the California Department of Consumer Affairs.

Subd. 2. Integrated Pest Management (IPM) Policy

The City of Sunnyvale, including all departments and staff herein, and contractors providing pest control services on City property shall follow the City's IPM policy for the control or management of pests in and around City buildings and facilities, parks and golf courses, urban landscape areas, rights-of-way, and other City properties.

A. Pest Control Advisor (PCA)

Licensed PCAs will consider the options or alternatives listed below in the following order, before recommending the use of or applying any pesticide on City property:

- (1) No controls (e.g., tolerating the pest infestation, use of resistant plant varieties or allowing normal life cycle of weeds)
- (2) Physical or mechanical controls (e.g., hand labor, mowing, etc.)
- (3) Cultural controls (e.g., mulching, disking, alternative vegetation)
- (4) Biological controls (e.g., natural enemies or predators, goats)
- (5) Reduced-risk chemical controls (e.g., soaps or oils)

B. Pesticide Applicator (QAL, QAC, or Structural Pest Control Operator)

- (1) Those licensed or certified City staff and contractors employed by the City to control or manage pests will follow the IPM Best Management Practices and Standard Operating Procedures found in the City of Sunnyvale Urban Runoff Management Plan (URMP) Pest Management Control Program chapter.
- (2) Pesticide Applicators will use the most current IPM technologies available to ensure the long-term prevention or suppression of pest problems and to minimize negative impacts on the environment, non-target organisms, and human health.

C. All City Staff and Departments

- (1) City departments and staff will promote non-toxic and reduced-risk alternatives for structural and landscape pest control, seeking to use the most up to date IPM technologies and best management practices.
- (2) The City will provide education for all City staff regarding IPM practices. The Public Works Department/Environmental Division will also provide information to residents and special districts within the City regarding the IPM Policy and how it is being implemented. The City, through Public Works Department/Environmental Division activities, will establish a role model approach to encourage the use of IPM techniques for structural and landscaping pest management practices with residents, businesses, and special districts.

D. Pest Management Contractors Employed by the City

New contracts that are negotiated with pest management contractors doing work on City-owned property after January 9, 2003 will include requirements that the contractors follow the practices of the City's IPM Policy as described in the Sunnyvale Administrative Policy Manual and the Best Management Practices and Standard Operating Procedures of the Sunnyvale Urban Runoff Management Plan, Pest Management Control Program chapter.

E. City Property Leaseholders

- (1) The City shall use reasonable efforts to require the use of IPM practices as a part of new and renewed leases negotiated for City property after January 9, 2003.
- (2) City property leaseholders will be informed of the City's IPM Policy by Public Works Department staff and encouraged to use, whenever practical, the IPM Best Management Practices and Standard Operating Procedures described in the Sunnyvale Urban Runoff Management Plan.

Subd. 3. Pesticide Application

A. Who May Apply Pesticides

- (1) Only City employees or pest control contractors employed by the City who are authorized and trained to recommend or apply pesticides (i.e., hold PCA, QAL, QAC, or Structural Branch Operator I, II, or III certifications or licenses) may apply any pesticides to City property.
- (2) City employees who are not authorized and trained in pesticide application are prohibited from using any pesticides, including over-the-counter brands, in or around the work place. If insects or other pests are infesting a work area, contact Facilities Management (x7761) to arrange for a pest management contractor to apply the appropriate control methods.

B. Pesticides of Concern

- (1) City employees and/or contractors employed by the City who are trained to recommend or apply pesticides will not use organophosphate pesticides (e.g., those containing Diazinon and chlorpyrifos) or copper-based pesticides unless:
 - (a) Their use can be justified,
 - (b) Other approaches and techniques have been considered, and;
 - (c) Adverse water-quality impacts are eliminated.
- 2) Pesticides that contain Clopyralid are of concern because they are persistent and must not enter the green waste recycling/composting process. Therefore, City employees or pest control contractors employed by the City will not apply Clopyralid-containing pesticides to City property unless:
 - (a) Their use can be justified,
 - (b) Other approaches and techniques have been considered, and;
 - (c) Green waste (grass clippings, etc.) from areas where Clopyralid-containing pesticides are to be applied will not be collected for composting, but will be left on site to promote a healthy thatch layer.

C. Water Quality Management

- (1) When recommending pesticides for use or applying pesticides, the element of Environmental Stewardship must always be taken into consideration. City employees or pest control contractors employed by the City will select and apply IPM methods that will have the least impact on water quality and the environment.
- (2) City employees or pest control contractors employed by the City will always avoid applications of pesticides that directly contact water, unless the pesticide is registered under Federal and California law for aquatic use. Pesticides that are not approved for aquatic use will not be applied to areas immediately adjacent to water bodies where through drift, drainage, or erosion, there is a possibility of a pesticide being transported into surface water.

- (3) Discharges of pollutants from the use of aquatic pesticides to the waters of the United States require coverage under a NPDES permit. Those city employees or pest control contractors employed by the City who apply pesticides directly to waters of the United States will obtain a NPDES permit from the California State Water Quality Resources Control Board Region 2, prior to making any pesticide applications.

Subd. 4. Employee and Pest Control Contractor Training for PCA, QAL, QAC or Structural Pest Control Operators (Branch I, II, and III)

- A. All Pest Control Advisors and Applicators employed by the City or its pest control contractors will be licensed by the State of California Department of Pesticide Regulations (DPR) as a Pest Control Advisor or licensed Qualified Applicator.
- B. All other employees involved with pesticide applications as a normal part of their job duties and pest control contractors hired by the City will be trained as required by State of California DPR rules, the County Agricultural Commissioner, and/or the Structural Pest Control Board. They will work directly under the supervision of a licensed applicator.
- C. All City Departments that use pesticides on City property will provide annual training to all employees who apply pesticides as a normal part of their job duties on:
 - Pesticide Safety,
 - The City's IPM Policy, and
 - Appropriate BMPs and SOPs from the Sunnyvale Urban Runoff Management Plan, Pest Management Control Program chapter.

Subd. 5. Education and Outreach on the Sunnyvale IPM Policy and Implementation Plan

- A. The Public Works Department/Environmental Division, in participation with the Santa Clara Valley Urban Runoff Pollution Prevention Program, will continue with its existing program to encourage people who live, work, and/or attend school in Sunnyvale to:
 - (1) Obtain information on IPM techniques to control pests and minimize pesticide use;
 - (2) Use IPM technologies for dealing with pest problems; and
 - (3) Properly dispose of unused pesticides and their containers.
- B. The Public Works Department/Environmental Division will expand its current public outreach program on the topics described above to include:
 - (1) City employees who are not authorized to apply pesticides as a part of their normal job duties.
 - (2) Selected business owners (i.e. landscape gardeners and commercial pesticide applicators).

- (3) Special Districts that occur within the Sunnyvale city limits.
- (4) School District staff that may be involved with pest management.

Subd. 6. Reporting

- A. To provide details on the previous year's pesticide use on City-owned property, each City department and pest control contractor employed by the City will submit copies of their State of California Monthly Summary Pesticide Use Report (Form PR-ENF-060) to the Environmental Division Manager of the Public Works Department in January of each calendar year. This information is reported as a part of the City's NPDES Stormwater Permit Annual Report compiled by the Public Works Department/ Environmental Division.
- B. Each City department that applies pesticides will conduct an annual inventory by December of each calendar year to identify pesticides that are no longer legal or appropriate for applications per Federal, State, County, or City requirements. Results of the inventory will be reported to the Environmental Division Manager of the Public Works Department in January of each calendar year for the previous year's inventory. This information is reported as a part of the City's NPDES Stormwater Permit Annual Report compiled by the Public Works Department/ Environmental Division.
- C. Each City department that applies pesticides will conduct an annual review and evaluation process of the effectiveness of the City's IPM Policy, BMPs and SOPs. They will provide a written evaluation to the Environmental Division Manager of the Public Works Department in July of each year that discusses:
 - (1) New IPM techniques that could be used to improve results
 - (2) Staff training needs with a focus on the safe use, disposal, and storage of pesticides
 - (3) Suggested modifications to the City's IPM Policy, BMPs, and SOPs to ensure that the Policy and implementation plan continue to be effective.

Section 3. Roles and Responsibilities

It is the responsibility of all City departments, staff and contractors to adhere to the Integrated Pest Management Policy.

All City Departments that use pesticides

- Submit monthly summary pesticide use reports to the Environmental Division Manager.
- Conduct annual inventory of pesticides and report to Environmental Division Manager.
- Conduct annual review of the effectiveness of the City IPM and report results to Environmental Division Manager.

Public Works Department/Environmental Division

- Provides information to residents and special districts regarding the IPM and encourage the use of IPM techniques for structural and landscaping pest management practices.
- Encourages the use of IPM practices by City property leaseholders.
- Works with the Santa Clara Valley Urban Runoff Pollution Prevention Program to disseminate information about IPM techniques

Environmental Division Manager

- Receive monthly summary pesticide use reports from City departments and contractors
- Receive results of annual inventory and review of pesticides and processes from the city departments
- Compiles NPDES Stormwater Permit Annual Report

Facilities Management

- Arranges for pest management contractors in response to reports of insect or pest infestations.
- Provide information to the Environmental Division on the details (types and quantities) of pesticides used on City property by the contractors they hire.

EXHIBIT W

GUARANTY

THIS GUARANTY (the "Guaranty") is given as of the ____ day of _____, 2007, by _____
(hereafter "Guarantor"), to the CITY OF SUNNYVALE, a public agency (hereafter "the City").

THIS GUARANTY is made with reference to the following facts and circumstances:

A. _____
is a _____ organized under the laws of the State of _____
_____. ("Contractor").

B. Guarantor is _____.

C. The City contemplates entering into an "Agreement for the Operation of the Sunnyvale Materials Recovery and Transfer Station," under which Contractor is to provide specified services to the City, its residents and businesses ("Agreement"). A copy of this Agreement is attached hereto and incorporated herein by this reference.

D. It is a requirement of the Agreement, and a condition to the City's entering into the Agreement, that Guarantor guaranty Contractor's performance of the Agreement.

E. Guarantor is providing this Guaranty to induce the City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. Guaranty of the Agreement. Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely performance, satisfaction and observation by Contractor of each and every term and condition of the Agreement which Contractor is required to perform, satisfy or observe. In the event that Contractor fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, satisfy or observe them in the place of the Contractor. Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Contractor due to its breach of the Agreement.

2. Guarantor's Obligations Are Absolute. The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Contractor under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Agreement.

3. Waivers. The Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Contractor; (2) any amendment, modification or waiver of any provision of the Agreement; (3) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (4) any waiver, extension, release or modification with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against Contractor; or (5) any merger or consolidation of the Contractor with any other corporation or entity, or any sale, lease or transfer of any or all the assets of the Contractor. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code Sections 2845, 2849 and 2850, including, without limitation, the right to require the City to (a) proceed against Contractor, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Contractor or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may hold now or hereafter hold. Guarantor agrees that the City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Contractor or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guarantee.

The Guarantor hereby waives and agrees to waive at any future time at the request of the City, to the extent now or then permitted by applicable law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice to the Guarantor, the time for Contractor's performance of or compliance with any of its obligations under the Agreement is extended, or such performance or compliance is waived; (b) the Agreement is modified or amended in any respect; (c) any other indemnification with respect to Contractor's obligations under the Agreement or any security therefor is released or exchanged in whole or in part or otherwise dealt with; or (d) any assignment of the Agreement is effected which does not require the City's approval.

The Guarantor hereby expressly waives diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Contractor prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. **Term**. This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed by Contractor, and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Contractor's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the City against Contractor arising out of the Agreement based on Contractor's failure to perform which has not been settled or discharged.

5. **No Waivers by City**. No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver by City of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver by City be effective except in the specific instance or matter for which it is given.

6. **Attorney's Fees**. In addition to the amounts guaranteed under this Guaranty, Guarantor agrees to pay actual attorney's fees and all other costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law; Jurisdiction**. This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws rules for all purposes, including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts and agrees not to seek to remove such action to a federal court. Guarantor appoints the following person as its agent for service of process in California:

8. **Severability**. If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity shall have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. **Binding on Successors**. This Guaranty shall inure to the benefit of the City and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets.

10. **Subordination**. Any claims Guarantor may have against Contractor are hereby subordinated to any and all claims of the City against Contractor until such time as the obligations of Contractor to the City are fully satisfied and discharged.

11. Notices. Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To the City: City of Sunnyvale

Sunnyvale, CA _____

Attention: _____

With a copy to the City Attorney at the same address.

To Guarantor: _____

The parties may change the address to which notice is to be sent by giving the other party notice of the change as provided in this Section.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty on the day and year first above written.
